

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4522 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NG VAJA

Versus

STATE OF GUJARAT

Appearance:

MR N.G.Vaja, party-in-person for Petitioner

MR V.B.Gharania, AGP for the Respondent

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 30/12/98

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing the order dated 22.4.88 Annexure "G" whereby the petitioner has been retired compulsorily from the Government service with effect from the date of receipt of the said order by him in the public interest under clause (aa) of sub-clause (1) of Rule 161 of the Bombay Civil Service Rules, 1959 and for a direction to

the respondent to treat the petitioner in service and confer all the benefits as if he is in service and is entitled to and for a direction to the respondent to give posting to the petitioner on the post of Deputy Collector or any other equivalent post.

2. The petitioner was directly recruited as Mamlatdar and joined the said post on 2.4.68. The petitioner gave details regarding his posting in his parent department and in other departments on deputation.

During the period from 25th March, 1978 to 16.2.79, while the petitioner was officiating as Mamlatdar and ALT, Viramgam, a departmental inquiry was instituted against him on the allegation that he had committed administrative irregularities during the work done from April, 1978 to August, 1978 and the Government ordered for stoppage of one increment vide order dated 21st August, 1980. He was also charge-sheeted on the allegation that he has committed administrative irregularities during the period from September to December, 1978 when he was officiating as Mamlatdar and ALT, Viramgam. After conclusion of the inquiry, a show cause notice was given to him as to why penalty of compulsory retirement be not imposed upon him. The petitioner submitted his explanation and also made oral submissions and after due consideration of the same, the Government imposed penalty of stoppage of two increments. The petitioner has challenged that order of Government by filing a petition in this Court being Special Civil Application no. 735 of 1988. In the year 1984, the Government again decided to conduct a departmental proceedings against the petitioner on the allegation that the petitioner had committed administrative irregularities for the period during 1.1.79 to 16.2.79. The petitioner filed a contempt petition being Misc. Civil Application no. 564 of 1985 against the order passed by the Government dated 24.7.84 and the Government revoked the order of initiating departmental proceedings by an order dated 31.8.85. Other departmental inquiry was initiated by an order dated 21.6.1982 in respect of duties which the petitioner performed during 1.12.69 to 24th May, 1971 as Mamlatdar, Umergaon and in those proceedings the order of imposing penalty of stoppage of one increment vide order dated 27th June, 1984 was passed and that order was also challenged in this Court by way of filing Special Civil Application no. 477 of 1984. For the period 25.9.1981 to 31.1.1984, while the petitioner was officiating as Mamlatdar, Sales Tax

recovery, a charge-sheet dated 11.11.86 was issued to him. An adverse remarks entry was made in the confidential report for the period from 14.9.1984 to 31.3.1985. At that time, the petitioner was officiating as Mamlatdar and ALT, Anand Kheda district and that entry was communicated to the petitioner on 30.1.1987. The petitioner submitted his representation in that respect on 30.1.1988. The petitioner has been performing his duties with due care, honesty and integrity. The petitioner's service record is good and certificate was issued showing performance of duties as Deputy Collector during September, 1985 to April, 1988. The petitioner having worked efficiently was issued the impugned order dated 22.4.88 compulsorily retiring the petitioner from service. Though the petitioner was promoted as Deputy Collector in September, 1985 even then the petitioner was awarded an adverse entry for the performance of duties as Deputy Collector for the period from 14.9.84 to 31.3.85.

3. The petitioner has argued this case as party-in-person. He has argued that the impugned order is malafide, arbitrary and not sustainable in the eye of law. The petitioner has also challenged the formation of Review Committee for taking a decision whether an employee holding class-I post should be compulsorily retired on reaching the age of 50 years or not. The contention of the petitioner is that the constitution of the Committee is illegal inasmuch as per Government Resolution dated 28th July, 1987, this Review Committee should consist of Secretary to Government as Chairman and Head of Department concerned as member. As the petitioner was working under the control of Commissioner of Fisheries at the relevant time, the Commissioner of Fisheries should have been a member of that Committee. Though in the present case, the Land Reforms Commissioner and Ex-officio Secretary, Revenue Department was a member of that committee and he should not have been appointed as a member of that committee as at the relevant time, the petitioner was working under the control of Commissioner of Fisheries, a Senior IAS officer and that Commissioner of Fisheries should have been appointed as a member of that Committee. As such constitution of the committee was against the provisions of statutory rules as mentioned in the Government Resolution dated 28th July, 1987. The decision of the illegally constituted Review Committee is illegal and void and not sustainable in law.

4. The respondent State has filed its affidavit-in-reply wherein it has been asserted that general administration department has laid down certain

guidelines for retention of an officer in service after the age of 50 years whose service record has to be seen which should at least be satisfactory. The confidential reports of the entire service record of the petitioner was required to be taken into consideration and not only the confidential report of last 8 to 10 years only. The confidential reports of the petitioner were not good or even satisfactory for the period from 1.1.73 to 23.4.73. The remarks were below average for the period from 25th March, 1978 to 31.3.79. The remarks were like an average officer. A lot of complaints of corruption have been received and the matter has been referred to the Revenue Department for inquiry through Anti-corruption bureau, and the petitioner was charge-sheeted for lapse in deciding tenancy cases and the petitioner was found a person of doubtful integrity. For the period from 14th September, 1984 to 31.3.85, the department passed an order directing that the petitioner should not be posted on the post where he has to deliver judgments or deal with public affairs. The remarks reflected the capacity of the petitioner to perform his duty and his integrity was doubtful and was not reliable. The decision was taken by the Review Committee consisting of high ranking officers and after looking to the total facts of the case, came to the conclusion that the petitioner was no more required in service in public interest. In three cases of departmental inquiry, the petitioner was found responsible and was punished with stoppage of increments and in one case, he was given a warning and in another case was pending. The Government has no motive in instituting three inquiries and the petitioner did not conduct the tenancy cases as per procedure laid down under Tenancy Act. Hence, charges were already proved in those two inquiries against him. The petitioner has been retired prematurely in the public interest when irregularities came to the notice of the Government and the charge-sheets were also issued to him and all the irregularities of Viramgam and Umergaon came to the notice of the Government at different times and therefore, it was not possible for the Government to club all the inquiries and hence different charge-sheets were issued for different charges. It was felt that major penalty should not be imposed and minor penalty was imposed on the petitioner. In spite of all these facts, the petitioner's conduct continued with all of unbecoming of a Government servant. Therefore, the power has to be exercised by the authorities.

6. The petitioner has filed a rejoinder affidavit wherein it is stated that as per appendix-A

para II(2), the Review Committee should consist of one Secretary to the Government as Chairman and (ii) Head of the Department concerned as member. In the case of the petitioner, the Commissioner of Fisheries was the head of the Department concerned. However, contrary to express provisions of the above Resolution, the Commissioner of Fisheries, was not included in the Committee. Therefore, the decision taken by the unauthorised committee is a nullity. It is also stated that the confidential report pertaining to 1.1.73 to 23.4.73 was never communicated to the petitioner and therefore, no reliance could have been placed on uncommunicated confidential reports. As such, any adverse confidential report regarding the period 1.1.73 to 23.4.1974 cannot be taken into consideration. Regarding the period from 25.3.78 to 31.3.79, procedure was amended and the officer concerned was required to prepare self-appraisal and was required to forward the same to his higher authority i.e. reporting authority and the petitioner was not issued any adverse remarks in respect of that period. If there was any adverse remarks, it was not communicated to the petitioner which cannot be taken into consideration against the petitioner. No adverse remarks of the confidential report regarding the period 25.3.78 to 31.3.79 was communicated to the petitioner. Hence, the decision taken by the respondents on the basis of two adverse confidential reports is a nullity. No adverse remarks for the period from 14th September, 1984 to 31st March, 1985 were communicated to the petitioner within prescribed period of six weeks though it was communicated to the petitioner on 31.1.87 after a period of 92 weeks and hence, it cannot be taken into consideration. Regarding remarks in para IV, the authority has mentioned that the performance of the petitioner was not good and the knowledge of tenancy law of the petitioner was not good as number of cases were wrongly decided by the petitioner which were taken in review as per the directions of the reviewing authority. It was clarified in para-2 of the communication dated 30.1.87 that the gist of other part of the report was that the petitioner had taken quick and sound decisions and his relations with fellow officers and general public are good. He possessed good clarity of thoughts and power of expression on paper. The petitioner made a representation to expunge the said adverse remarks. However, no decision was taken by the government even till the date of filing of this petition. The impugned order was passed considering three confidential reports out of which two were never communicated to the petitioner and the third was communicated after a period of 92 weeks and not within statutory period of six weeks and that should

not be taken into consideration.

It was further argued by the petitioner himself that it was necessary for the respondents to place all the facts before the Review committee that the representations in all adverse CRs are not decided but pending and the Reviewing authority was not justified in taking into account this fact that any adverse remarks on which final decision has not been taken. Complaints of corruption were received and the matter was referred through the revenue department to Anti corruption bureau. The petitioner was charge-sheeted for lapse in deciding tenancy cases and for doubtful integrity in respect of the allegation that the petitioner possessed disproportionate property as against his known sources of income, that fact was inquired by the Anti corruption Bureau and the charges were not found correct and true. In that respect, the report was forwarded to the Government and the Government has accepted the same and informed the Collector by a letter dated 20.6.79. The allegation regarding doubtful integrity of the petitioner were not proved and they were communicated to the Government and the Government had accepted the said report. The adverse remarks in the confidential reports for the period from 1.1.73 to 23.4.73, 25.3.78 to 31.3.79 and 14.9.84 to 31.3.84 were not communicated to the petitioner and the third was communicated after a period of 92 weeks. The Review Committee was not formed as per Government resolution dated 28th July, 1987. The premature retirement of the petitioner at the age of 50 years is not in public interest and it was passed with a malafide intention and in colourful exercise of powers to meet with malafide intention. The order of stoppage of one increment without future was not made out on the ground of integrity. It was made in the year 1980. The petitioner was given promotion from the cadre of Mamlatdar to Deputy Collector. When the respondents had taken a decision to promote the petitioner, no question arises regarding performance, integrity etc. of the year 1985. The petitioner was given the best performance award at the State level by the respondent in the year 1975-76 and the certificate was also issued. As he had made complaints against superior officer for non co-operation in the work hence, adverse remarks were made against him.

7. Another affidavit-in-reply has also been filed by the Under Secretary to Government in which it has been asserted that the Commissioner of Land Reforms was the member of the Review Committee. The Commissioner

of Fisheries had nothing to do with the Review Committee. The petitioner was retired prematurely on the basis of his overall performance transpiring from his whole service record. He was retired prematurely not only on the basis of the confidential reports but also on the basis of his integrity and the result of various inquiries. The Committee came to the conclusion that the integrity of the petitioner was doubtful and recommended for premature retirement of the petitioner and that was in the public interest. There was no unfair intention at all on the part of the Government. The petitioner was promoted to the post of Deputy Collector purely on ad hoc basis and it was done due to interim orders passed by this Court in Special Civil Application no. 477 of 1985.

8. The first contention of the petitioner is that the Review Committee was not formed in accordance with Government Resolution. The head of the department concerned means where the petitioner was working and not the head of the department of another department. In the present case, the Commissioner of Land Reforms was the member of the Review Committee, though the petitioner was working under the control of the Commissioner of Fisheries, the formation of the Review Committee was not as per the direction of the Government in the Government Resolution. As such, the decision taken by the Review Committee which was illegally formed, cannot be treated as legal and it was violative of statutory rules and is not maintainable in the eye of law. In this connection, the petitioner has relied on the judgment in the case of Gujarat Housing Boards, vs. G.C.Desai reported in 1982(2) GLR, 489 wherein this Court has considered that two other members of the committee who were also outsiders, were the members of the Housing Board and as such, the committee consisting members of the Housing Board was not legally constituted and as such, the head of the department should be the proper person who can deliver goods and on the basis of whose opinion and objections, assessment of the situation can be properly arrived at by the Review Committee. The decision arrived at by the Review Committee therefore, was not a decision in the eye of law as proper person who could have decided the matter was not the member of the committee and those who were in the committee could not have arrived at an effective objective judgment.

9. I have considered the contentions raised by the petitioner. But in the present case, the confidential reports and inquiry reports were relating to the period in which the petitioner was working under the control of Commissioner of Land Reforms. The appropriate

person was the Commissioner of Land Reforms and not the Commissioner of Fisheries. The Commissioner of Fisheries had no concern with working of the petitioner which were considered by the committee. As such, the contention raised by the petitioner is not entertainable.

10. So far as the second contention raised by the petitioner is concerned, that the petitioner himself has shown that entries and integrity on the basis of the Review Committee came to the conclusion which are as under:

- (1) Period from 1.1.73 to 23.4.1973 wherein the petitioner was shown as below average.

In this respect, the petitioner submitted that this entry was not communicated to him.

- (2) The second entry is in respect of the period from 25.3.78 to 31.3.79 wherein the petitioner was shown as an average officer.

In this respect, the petitioner submitted that three inquiries were instituted against him.

- (i) In respect of the period from 25.3.78 to 31.8.78, in which one increment was withheld.
- (ii) Other entry in respect of the period from 1.9.78 to 31.12.78 wherein two increments of the petitioner were withheld and that decision was challenged by him in this Court by way of filing a petition which is still pending.
- (iii) So far as the entry regarding period from 1.1.79 to 16.2.79 is concerned, during the proceedings of Special Civil Application in this Court, the inquiry was withdrawn.

The third item was regarding lot of complaints of corruption against him. The matter was referred to Anti corruption Bureau and the petitioner was also charge-sheeted for lapses in deciding tenancy cases in which the petitioner's integrity was found doubtful. In this respect, the submission of the petitioner is that Anti corruption Bureau exonerated the petitioner from all charges and the report was forwarded to the Government which was accepted. As such, no charge regarding corruption was available against him and the charges for lapse in deciding tenancy cases were also not proved against him. The fourth item of confidential report is

in respect of the period 14.9.84 to 31.3.85 wherein a direction was given that the petitioner should not be posted to a place where he has to deliver judgments. In this respect, the submission of the petitioner is that the entry was communicated to him after a period of 92 weeks which is to be communicated within six weeks under statutory provisions of rules. As such, the Review Committee was not justified in recommending the matter of the petitioner for premature or compulsory retirement in public interest.

In this connection, the petitioner also relied on a decision in the case of C.N.Pancholi vs. Government of Gujarat reported in 1996(2) GLR, 638. It appears from the decision of the learned Single Judge of this Court that there was no evidence to justify the decision of the Review Committee. As such, the petition was allowed. But in the present case, there is a lot of material on record to form an opinion that the officer concerned should be retained in the department or not. The order has been passed under rule 161 (aa)(i) of Bombay Civil Service Rules, 1959 wherein it is stated that notwithstanding anything contained in clause (a), an appointing authority, if he is of the opinion that it is in the public interest so to do, have the absolute right to retire any government servant to whom clause (a) applies by giving him a notice of not less than three months in writing or three months' pay and allowances in lieu of such notice.

10. The learned APP Mr. Shah contended that the Review committee is only required to consider the service record of the petitioner and the Review Committee can take into account uncommunicated adverse remarks also against the person concerned and for this purpose, he relied on the supreme court judgment in the case of Baikunatha Nath Das and another vs. Chief District Medical Officer, Baripada and another reported in AIR 1992, SC, 1020 wherein it has been observed that it cannot be said that adverse remarks should not be communicated or that the representation, if any, submitted by the Government servant against such remarks should not be considered or disposed of. Adverse remarks ought to be communicated in the normal course as required by rules. Any representation made against them would and should also be dealt with in normal course with reasonable promptitude. It was made clear by the Supreme Court that what is normally required to be communicated is adverse remarks and not adverse remarks notes or observations in confidential rolls. There may be any number of remarks observations and notes which do not

constitute adverse remarks but are yet relevant for the purpose of fundamental rule 56(j) or a rule corresponding to it and the rule has been laid down that an order of compulsory retirement is not liable to be quashed by court merely on showing that while passing it, uncommunicated adverse remarks were also taken into consideration. That circumstance by itself cannot be a basis for interference. The petitioner made an attempt to distinguish the facts and circumstances cited by the learned AGP on the ground that the facts of the case were in connection with compulsory retirement, while the case of the petitioner is only in respect of premature retirement. Hence, the rule laid down by the Supreme Court is not applicable to the facts of the present case.

I have carefully considered the submissions made on behalf of the rival parties. Whether it is a case of compulsory retirement though compulsory retirement is a punishment under the provisions of Gujarat Civil Service (Discipline and Appeal) Rules, 1971, but it appears from the order passed by the Supreme Court is in respect of premature and not compulsory retirement as the order of punishment. As such, the rule laid down by the Supreme Court is fully applicable to the facts of the present case. So far as the contention of the petitioner that certain entries were not communicated to him or communicated at a later stage, on the basis of such uncommunicated or communicated later on, could not be the basis for forming an opinion by the Review Committee, which has committed any mistake in considering the uncommunicated adverse remarks is not acceptable. The Decision of the Review Committee based on adverse remarks in respect of the period from 25.3.78 to 31.1.78, stopping one increment and adverse entries in respect of the period from 1.9.78 to 31st December, 1978 withholding of two increments even if it is assumed that it is under challenge before this Court by the petitioner, the Review Committee cannot be said to be unjustified in basing upon these two entries. So far as the promotion is concerned, that was given pursuant to the orders of this Court in Special Civil Application No.477 of 1985 on the basis of which it cannot be said that the Government has waived the decision or reliance on the adverse remarks against the petitioner.

10. The petitioner has relied on the Government Resolution dated 5th September, 1981 wherein the procedure has been laid down regarding entries of integrity. If an officer is exonerated his integrity should be certified and an entry to that effect be made in the confidential report. If suspicion regarding his

integrity are confirmed also should be recorded and duly communicated to the officer concerned. Even if it is assumed that certain entries were not communicated to the petitioner and the Review Committee has based its opinion on such uncommunicated entries, in view of the rule laid down by the Supreme Court, the Court should not interfere in the writ jurisdiction.

11. I have also considered the submissions made by the petitioner regarding formation of the Committee in which the Commissioner of Land Reforms has been made a member of the committee in place of Commissioner of Fisheries under whose control the petitioner was working at the relevant time. All the entries and adverse remarks which had been considered by the Review committee are in respect of the cases of land reforms. The Commissioner of land reforms was only a best person to come to a firm opinion regarding integrity or adverse remarks in the confidential report. As such, the Commissioner of the Land Reforms was justified to be a member of the Review Committee and the Review Committee has considered the entire service record of the petitioner and thereafter it has come to the conclusion that the petitioner should not be retained in service. The recommendation of the Review Committee cannot be said to be unjustified in law. As such I find no merit in this petition and this petition is liable to be dismissed. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.

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